

MEMORANDUM OF AGREEMENT
REGARDING THE TRANSFER, CONSERVATION, AND MAINTENANCE OF
MITIGATION PARCELS

THIS AGREEMENT REGARDING THE TRANSFER, CONSERVATION,
AND MAINTENANCE OF MITIGATION PARCELS CITED BELOW ("Property") is
made and entered into on March 12, 1999, by and among the California Department of
Fish and Game ("CDFG"), and the California Department of Transportation ("Caltrans").

RECITALS:

- 708 ac
- A. Whereas, 11 mitigation parcels so named: Blue Sky Ranch, Bonsall, Carlsbad Highlands, Del Mar Mesa (includes two parcels)/Lopez Ridge, Krutoff, Lake Hodges, Pilgrim Creek, Rancho Montana, Rutherford Ranch, and San Diego River (Exhibit A) will be transferred from Caltrans to CDFG.
 - B. Whereas, CDFG agrees to conserve and maintain these mitigation parcels and their natural resources in perpetuity.
 - C. Whereas, Caltrans agrees to provide \$4,865,292 in fees as an endowment specified for the conservation and maintenance of these parcels by CDFG in perpetuity.
 - D. Whereas, the CDFG is a "qualified organization" within the meaning of Section 170(h) of the Internal Revenue Code ("IRC") of 1986, as amended. The CDFG is also a tax-exempt nonprofit organization qualified under Section 501(c)3 of the IRC. The CDFG will manage the land in an environmentally and biologically beneficial manner consistent with state and federal environmental laws.
 - E. Whereas, this Agreement does not in any manner affect statutory authorities and responsibilities of the signatory parties.

NOW, THEREFORE, in consideration of the mutual terms and provisions herein set forth, the parties agree to the following:

1. Caltrans shall transfer \$4,865,292 to CDFG, as an endowment, within 60 days of execution of this agreement. Upon payment of the agreed amount and execution of this agreement, CDFG or its agents shall be responsible for the following:
 - a. Caltrans shall transfer, and CDFG shall accept, the 11 mitigation parcels, identified on the parcel maps attached hereto as Exhibit "A", by an agreement of Transfer of Control and Possession of State Owned Real Property, which shall be subject to approval by the Department of General Services. Legal descriptions will be included with the Transfer of Control and Possession document.
 - b. Upon execution of the Agreement of Transfer of Control and Possession of State Owned Real Property, CDFG will be responsible for management activities on said parcels. Management activities may include, but are not limited to, fencing and signs needed for the protection of the Property; biological monitoring; patrolling; measures to determine the most efficient control of invasive exotic species when feasible; interaction with local and state individuals and organizations working with similar species and land holdings and conducting research; outreach with grazing interest; reporting; management of equipment access including vehicles; and removal of trash and such other items as determined. All of the above activities shall be performed at no additional expense to Caltrans.
 - c. The transfer of these parcels does not preclude Caltrans' current obligations under existing permits for the Pilgrim Creek parcel (Army Corps 404 Permit # 95-20133-DZ and CDFG 1601 Permit # 5-179-95) to: monitor for performance (see Exhibit C) and perform general maintenance activities including, but not limited to: trash removal, vandalism repair, fence maintenance, and erosion control. Caltrans' obligations end at the end of 2001.
 - d. On those parcels where all mitigation credits have not been used, Caltrans will continue to possess the right to those mitigation credits.
 - e. CDFG will be responsible for maintenance on all parcels, with the exception of the Pilgrim Creek parcel, in which Caltrans must perform maintenance and mitigation monitoring until the year 2001 or until success criteria are fulfilled.
 - f. After Caltrans' monitoring obligations for Pilgrim Creek are complete, CDFG shall manage and preserve the significant archaeological site in perpetuity per

stipulations specified in the attached Memorandum of Agreement between CDFG, SHPO, and Caltrans (Exhibit B).

2. Interpretation. This Agreement shall be governed by and construed in accordance with the laws of the State of California. The captions of paragraphs used in this Agreement are for convenience only. No addition to or modification of any term or provision shall be effective unless set forth in writing, and signed by all the parties. This Agreement and the exhibits attached hereto contain the entire Agreement of the parties, and supersede any prior written or oral Agreements between them concerning the subject matter contained herein. There are no representations, agreements, or understandings, oral or written, relating to the subject matter, which are not fully expressed herein.

3. Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. The CDFG agrees to reference the terms of this Agreement in any deed or other legal instrument by which they divest themselves of any interest in all or a portion of the parcels, including without limitation, a leasehold interest. CDFG or their successors and assigns shall not transfer, assign, give, nor sell the Property to any person, entity or government agency unless the purpose of said person, entity or government agency includes the preservation of habitats and related species, and unless the permission of the other party is obtained in writing. The failure of the parties to perform any act required by this paragraph shall not impair the validity of this Agreement nor limit its enforcement in any way.

4. Payments. All payments shall be in lawful money of the United States of America.

5. Exhibits. All exhibits referred to herein are attached hereto and by this reference incorporated herein.

A. The following exhibits are incorporated as appendices to this agreement:

"Exhibit A":	Parcel Maps
"Exhibit B":	MOA between SHPO, CDFG, and Caltrans regarding stipulations for archaeological site on Pilgrim Creek parcel
"Exhibit C":	Pilgrim Creek Habitat Mitigation and Monitoring Proposal

6. The California Department of Transportation agrees to perform monitoring of the created and restored habitats of the mitigation bank area for the Pilgrim Creek parcel until the year 2001, or until success criteria is fulfilled.

7. This agreement shall not make or be deemed to make any party to this Agreement the agent for or the partner of any other party.

8. Any notice permitted or required by this Agreement shall be delivered personally to the persons set forth below or shall be deemed given five (5) days after deposit in the United States mail, certified and postage prepaid, return receipt requested and addressed

as follows or at such other address which any party may from time to time notify each of the other parties, in writing: (1) Caltrans, Director, 2829 Juan St., San Diego CA 92110; (2) California Department of Fish and Game, 4949 Viewridge Avenue, San Diego, CA 92123.

9. CDFG will indemnify and hold harmless Caltrans, its officers and employees, from any and all claims, suits or actions in law or equity, arising out of the obligations contained in this agreement regardless of the existence or degree of fault or negligence on the part of Caltrans, other than the sole negligence of Caltrans its officers or employees.

10. If any action at law or equity, including any action for declaratory relief, is brought to enforce or interpret the provisions of this Agreement, all parties to the litigation shall bear their own attorney's fees and costs. Notwithstanding the foregoing, the attorney's fees and costs recoverable against the United States, however, shall be governed by applicable Federal law.

11. No member of or delegate to the United States Congress or Federal Resident Commissioner shall be entitled to any share or part of this Agreement, or to any benefit that may arise from it.

12. This Agreement may be executed in any number of duplicate and counterpart originals. A complete original of this agreement containing original signatures of each of the parties shall be circulated to each of the parties by Caltrans, and a complete original of this Agreement shall be maintained in the official records of each of the parties hereto.

13. This Agreement shall not create the public or any member thereof as a third beneficiary hereto, nor shall it authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damages pursuant to the provisions of this Agreement. The duties, obligations, and responsibilities of the parties to this Agreement with respect to third parties shall remain as otherwise provided by law.

14. This Agreement has been executed on the day set by each signature attached hereto and shall become effective on the day and year written below.

15. This agreement may be amended only with the written consent of each of the parties hereto.

16. This agreement supersedes any and all other agreement, either oral or in writing between the parties hereto with respect to the subject matter hereof and contains all of the covenants and agreements among them with respect to said matter, and each party acknowledges that no representation, inducement, promise or agreement, oral or otherwise, has been made by any other party or anyone acting on behalf of any party which is not embodied herein.

Executed this 22 day of MARCH, 1998.

CALIFORNIA DEPARTMENT
OF TRANSPORTATION

DATED: 3/18/99

Joel Hane
Gary L. Gallegos
District Director

CALIFORNIA DEPARTMENT OF
FISH & GAME

DATED: 3/22/99

C.F. Raysbrook
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Regional Manager